

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 98-06

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In the Matter of Permits 12721 et al. (Applications 5626 et al.)<sup>1</sup> of the  
**U. S. BUREAU OF RECLAMATION**  
and the  
**CALIFORNIA DEPARTMENT OF WATER RESOURCES**

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SOURCES: Sacramento-San Joaquin Delta and Suisun Marsh

COUNTY: Solano

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**ORDER AUTHORIZING VARIATIONS IN FLOWS FOR MEETING  
FISH AND WILDLIFE SALINITY OBJECTIVES IN THE SUISUN MARSH,  
FOR THE PURPOSE OF CONDUCTING TESTS OR EXPERIMENTS**

BY THE BOARD:

1. On August 14, 1998, the State Water Resources Control Board (SWRCB) received a request for a variance of the salinity objectives in Suisun Marsh at compliance stations C-2, S-64, S-49, S-42 and S-21 from October 1998 through May 2001. The SWRCB has reviewed the request and finds as follows:
2. Salinity objectives for the Suisun Marsh are contained in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta (1995 Bay-Delta Plan), adopted by the SWRCB in May 1995, in Resolution 95-24. The purpose of the objectives is to protect fish and wildlife beneficial uses.

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<sup>1</sup> The permits affected by this order are listed in attachment 1.

3. The Suisun Marsh salinity objectives contained in the 1978 Bay-Delta Plan became conditions of the water right permits of the Department of Water Resources (DWR) and the U. S. Bureau of Reclamation (USBR) upon issuance of Decision 1485 (D-1485) in 1978. Suisun Marsh salinity objectives in the 1995 Bay-Delta Plan became conditions of the DWR and USBR permits upon issuance of Water Right Order WR 95-6 in June 1995. Currently, compliance with numeric channel water salinity objectives is required at five stations within the marsh. The stations are C-2, S-64, S-49, S-42 and S-21; compliance is required from October through May of each year.
4. The DWR and the USBR constructed the Suisun Marsh Salinity Control Gates (SMSCG) in Montezuma Slough in 1988 to assist in meeting the objectives contained in D-1485 and Order WR 95-6. The U. S. Army Corps of Engineers (ACOE) issued a permit for construction of the SMSCG. Special Condition II of this permit requires an evaluation of the impact of SMSCG operation on the migration of adult salmon. The National Marine Fisheries Service (NMFS) issued a Biological Opinion on the Central Valley Project Operations Criteria and Plan (CVP-OCAP) which also required that an evaluation of SMSCG impact on salmon migration be made.
5. In 1993 and 1994, the DWR and the USBR conducted the required fish passage studies. Permission for these studies was based, in part, on SWRCB Resolution 94-90, which allowed for variances in flow to meet salinity objectives.
6. The SMSCG steering group, which includes representatives from DWR, USBR, NMFS, ACOE, U.S. Fish and Wildlife Service, Suisun Resource Conservation District, and the Department of Fish and Game (DFG), has agreed that the SMSCG, when operating, block and delay migrating salmon in Montezuma Slough for a minimum of 12 hours each tidal cycle (6 hours two times a day). The steering group has decided to modify the SMSCG by creating slots between the flashboards through which the salmon can pass even when the gates are closed.

7. The decision to modify the SMSCG flashboards to provide fish passage was based on the best available information. The DWR and the USBR will monitor fish passage and salinity to determine whether this solution meets the objectives of improving adult salmon passage and salinity compliance. The experiment will take place in September and October, beginning in 1998 and extending for three consecutive years. Fish passage monitoring will be conducted when adult fall-run chinook salmon are present in Suisun Marsh, regardless of whether the SMSCG need to be operated. Monitoring of salinities will continue to be conducted at the compliance and monitoring stations throughout the October to May control season. The modified flashboards will remain installed as long as the operation of the SMSCG is necessary to control salinity.
8. The modified flashboards will reduce the ability of the SMSCG to control salinity in Suisun Marsh. On August 14, 1998, the DWR and the USBR filed a request for authorization to exceed the salinity objectives in the event that it is not possible to fully meet the objectives while operating the modified SMSCG. The variance is requested for the duration of the three-year experiment, October 1998 through May 2001. Based on salinity modeling, exceedances are expected to be infrequent and minimal.
9. The proposed SWRCB action meets the requirements of Condition 6 of D-1485. This condition allows for variations in flow for experimental purposes for protection and enhancement of fish and wildlife, provided that such variations do not cause violations of municipal, industrial, or agricultural water quality objectives.
10. The requested variations in flow will not cause violations of municipal, industrial, and agricultural standards in Order WR 95-6 or D-1485.
11. Because of the anticipated benefit of providing unimpeded passage to migrating adult salmon and the likelihood that variations in salinity will be minimal as a result of the modified flashboard in the SMSCG, this temporary authorization will not have a significant adverse effect on fish and wildlife.

12. The proposed SWRCB action is exempt from California Environmental Quality Act pursuant to 14 California Code of Regulations Section 15306 (basic data collection, research).

NOW, THEREFORE IT IS ORDERED THAT:

The SWRCB authorizes the DWR and USBR to vary the flows for meeting the Suisun Marsh salinity standards at salinity stations C-2, S-64, S-49, S-42 and S-21, pursuant to Condition 6 of D-1485, during the period of October 1998 through May 2001 for the purpose of evaluating salmon passage through the modified flashboards in the SMSCG. Exceedances of objectives at these stations during the experiment will not be considered a violation of water right permit conditions.

1. This authorization does not authorize the DWR or the USBR to violate existing or future requirements imposed under either the federal Endangered Species Act (16 U. S. C. A. sections 1531 to 1544) or the California Endangered Species Act (Fish and Game Code sections 2050 to 2098). (The proposed project is intended to comply, in part, with the NMFS winter-run chinook salmon Biological Opinion.)
2. This authorization is subject to the DWR and the USBR meeting all requirements of the DFG for the protection of fish and wildlife during the tests.
3. The DWR and the USBR shall submit a report to the SWRCB in June of each year during the experiment, summarizing activities during the previous twelve-month period.

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4. The Executive Director of the State Water Resources Control Board may revoke or suspend this authorization at any time during the test period for good cause, including but not limited to adverse effects on meeting other standards or adverse effects on fish and wildlife.

#### CERTIFICATION

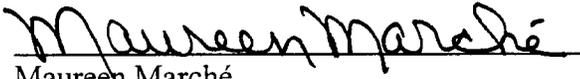
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 17, 1998.

AYE: John Caffrey  
James M. Stubchaer  
Marc Del Piero  
Mary Jane Forster  
John W. Brown

NO: None

ABSENT: None

ABSTAIN: None

  
Maureen Marché  
Administrative Assistant to the Board